IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.450 OF 1990

The State of Maharashtra ...Appellant.

v/s

Dilip Appasaheb Koli,
Adult, Occupation: Service,
residing at 747, "D" Ward,
Near Shahu Udyan, Kolhapur,
District: Kolhapur. ...Respondent.

Mr. A.S. Shitole APP for the State.

Mr. R.K. Mendadkar for the respondents.

CORAM: V.M. KANADE, J.
DATE : 11TH JANUARY, 2005

ORAL JUDGMENT:

1. State has filed this appeal against the Judgment and Order passed by the Special Judge, Kolhapur in Special Case No.5 of 1987. By the said Judgment dated 26/12/1989, the Special Judge acquitted the accused of the offence punishable under section 161 of the Indian Penal Code and section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act, 1947.

2. Prosecution case is that the accused was working as a senior clerk in the Irrigation Department at Kolhapur. The complainant - Dattatraya Kagkle was working as a clerk in the Office of the Executive Engineer, Kolhapur and before 1986 he was working at Kallamwadi Sub-division and he had submitted an

application to the Executive Engineer seeking his transfer from Kallamwadi to Kolhapur Office. The case of the prosecution is that the accused demanded bribe of Rs 200/- from the complainant and told him that he would manage to get the transfer order in favour of the complainant. The complainant, thereafter, was transferred to Kolhapur and the accused made a demand from the complainant immediately within 4/5 days, after he had joined the Kolhapur Office. Thereafter, demand was made from time to time. A complaint was lodged with the Anti Corruption Bureau and, thereafter, the accused was arrested after he had accepted the amount of Rs 200/-.

3. The Trial Court acquitted the accused and, against the said Order of acquittal, the present appeal has been filed by the State.

4. The learned APP appearing on behalf of the State has taken me through the Judgment and Order of the Trial court and oral and documentary evidence adduced by the prosecution. The accused has admitted the acceptance of an amount of Rs 200/-. However, he has explained to the Inspector who had apprehended him that the said amount was accepted by him since it was the repayment towards the hand-loan which was given by

him to the complainant. The Trial Court has dealt with the evidence adduced by the prosecution at great length. The Trial Court has considered the various circumstances and has accepted the explanation offered by the accused. The complainant had admitted in his cross-examination that he was in financial difficulties and that he had withdrawn the money from his Provident Fund on seven occasions. In his application at Exhibit-17 seeking transfer from Kolhapur, he has stated that he was in financial difficulty as he has to spent huge amount on the medical expenses incurred by him for the treatment of his son. The Trial Court considered these circumstances while accepting the explanation offered by the accused that he had given a loan to the complainant and that was repaid by him on the date of the incident.

5. From the evidence of the complainant, it can be seen that he has not given any particulars regarding the demands which were allegedly made by the accused. No particulars regarding time, date, place of demand has been mentioned by the complainant in his evidence. Theory of demand, therefore, is vaguely stated by the complainant in his deposition. The story of the complainant regarding demand made by the accused and

his alleged threat of harassment appears to be false since it has come on record that when the application for leave was preferred by the complainant, the accused was on leave and he was not responsible for treating the leave application of the complainant as leave without pay. It is a settled position in law that if the story of the prosecution regarding demand itself is found to be false then the prosecution case falls to the ground as the foundation on which the case is tried to be build up by the prosecution is proved to be false. In the present case also, the accused was working as a Senior Clerk. He did not have an authority to transfer the complainant from Kallamwadi to Kolhapur. It is difficult to believe that the complainant who was also working as a clerk would pay an amount of Rs 200/- to the accused knowing fully well that the accused neither had an authority nor the means to effect the transfer of the complainant. Under these circumstances, it is not possible to interfere with the order passed by the Trial Court. Appeal is accordingly dismissed.

V.M. KANADE, J.